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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 73-1347

THE BOARD OF SCHOOL COMMISSIONERS OF THE CITY OF INDIANAPOLIS, et al.,
Petitioners,

vs.

JEFF JACOBS, SUSAN CHANDLER, et al.,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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Opinions Below

The opinion of the District Court (App. B of Petition) is reported at 349 F. Supp. 605. The opinion of the Court of Appeals for the Seventh Circuit and the concurring in part and dissenting in part opinion (App. C of Petition) are reported at 490 F. 2d 601.

Jurisdiction

The jurisdictional requisites are adequately set forth in the Petition.

Questions Presented

The following statement of questions presented is set forth solely to clarify the issues which were adjudicated by the courts below. Respondents do not believe that the restated, clarified issues warrant review of the judgment and opinion of the Seventh Circuit.

1. Whether public school administrators and board members may constitutionally prohibit the sale of a student publication or the distribution of a student publication in exchange for voluntary contributions on school premises as provided in Rules 11.06 and 11.05, Section 1.3.1.5, Rules of the Board of School Commissioners of the City of Indianapolis?

2. Whether Rule 11.05, Section 1.1.1.3, Rules of the Board of School Commissioners of the City of Indianapolis, which provides:

> "No student shall distribute in any school any literature that is- - - - either by its content or by the manner of distribution itself, productive

of, or likely to produce a significant disruption of the normal educational processes, functions or purposes in any of the Indianapolis schools, or injury to others."

is unconstitutional as being vague and overbroad, and as an unconstitutional prior restraint on the First Amendment rights to freedom of speech, press and association of public high school students?

3. Whether Rule 11.05, Section 1.3.1.1, Rules of the Board of School Commissioners of the City of Indianapolis, which provides:

"No distributable literature shall be distributed by any student in any school while classes are being conducted in the school in which the distribution is to be made."

contravenes public high school students' rights to a free press, thought and expression as guaranteed by the First Amendment, United States Constitution?

4. Whether Rule 11.05, Sections 1.1.1.4 and 1.3.1.6, Rules of the Board of School Commissioners of the City of Indianapolis, which provide:

Section 1.1.1.4: "No student shall distribute in any

> school literature that is not written by a student, teacher, or other school employee; provided, however, that advertisements that are not in conflict with other provisions herein, and are reasonably and necessarily connected to the student publication itself shall be permitted."
>
> Section 1.3.1.6: "No distributable literature shall be distributed by any student in any school unless the name of every person or organization that shall have participated in the publication of the distributable literature is plainly written in the distributable literature itself."

are unconstitutional prior restraints in that they contravene public high school students' First Amendment rights to freedom of press, speech, thought and expression?

5. Whether the Corn Cob Curtain is an obscene publication?

6. Whether minor plaintiffs, real parties in interest in litigation challenging the constitutionality of public high school regulations which require prior unilateral administrative approval of student publications before distribution and which prohibit the sale and

distribution of student publications, may sue in their own names in federal district court pursuant to Rule 17(b) and (c), Federal Rules of Civil Procedure?

Constitutional, Statutory and Regulatory Provisions Involved

The pertinent provisions of the First and Fourteenth Amendments to the Constitution of the United States, Rule 17(c) of the Federal Rules of Civil Procedure, and the applicable Rules of the Board of School Commissioners of the City of Indianapolis are set forth in Appendices D, E and F of the Petition.

Statement of the Case

The jurisdiction of the district court was invoked pursuant to 42 U.S.C. §1983 and 28 U.S.C. §§1343, 2201 and 2202.

During July, 1971, plaintiffs, public high school students in the Indianapolis Public Schools, met for the purpose of forming an unofficial student newspaper entitled the "Corn Cob Curtain." Five issues of the "Corn Cob Curtain" were published by the plaintiffs during the 1971-1972 public school term. The first four issues of the "Corn Cob Curtain" contained poetry, opinion letters, articles

on student rights, the authority of school administrators, beading, student walkouts, public aid to private schools, draft counseling, reviews of musical performances, book reviews, commentaries on censorship, student union organization, student councils, curfews, and had cartoons containing opinion commentary.

The "Corn Cob Curtain" was sold to students, faculty members and administration officials by the plaintiffs although no set price was established. In exchange for copies of the unofficial student newspaper some students and faculty members made voluntary contributions, while other copies of the "Corn Cob Curtain" were provided at no cost.

On February 9, 1972, the plaintiffs were notified by the Principal of Arsenal Technical High School in a written bulletin that:

> "It is against school board rules to sell any item on school grounds without the express prior approval of the General Superintendent."

The rule referred to in the Arsenal Tech bulletin was Chapter XI, Sections 11.05 and 11.06 of the Policies and Regulations of the Board of School Commissioners of the City of Indianapolis which provided:

Section 11.05: "No persons shall exhibit any book, map, pamphlet or other article in the public schools or on school premises unless authorized to do so by the General Superintendent."

Section 11.06: "No sales, collections of money or of any articles, nor any contests or exhibits shall be conducted or permitted by or in any school without the express prior approval of the General Superintendent."

At this time Volume I, Issue 5 of the "Corn Cob Curtain" was ready for distribution by the plaintiffs, said issue containing a brief telephone directory, letters to the editor, articles on education, the draft, amnesty to war resisters, new academic courses, Appalachia, how West Virginia became a state, state legislative proceedings, school board meetings, the Baha'i faith, musical previews, poetry and a cartoon containing opinion commentary.

From February 9, 1972, until October 19, 1972, plaintiffs refrained from distributing copies of the "Corn Cob Curtain" in, on, or about the premises of any public high school pending determination of the issues by the district court.

Plaintiffs had filed their complaint in the district court on June 1, 1972.

The defendants, the Board of School Commissioners of the City of Indianapolis, and its individual members, the Superintendent and Administrative Assistant of the Indianapolis Public Schools, during the litigation twice amended their rules which continued and perpetuated prior restraints upon the plaintiffs' rights to freedom of press, speech, thought and expression. Since October 19, 1972, the date on which the district court entered its permanent injunction against the defendants, plaintiffs have published, distributed and sold or received voluntary contributions for subsequent issues of the "Corn Cob Curtain." On December 14, 1973, the Court of Appeals for the Seventh Circuit affirmed the judgment of the district court.

Certain "Questions Presented" Were Not Properly Raised Below

Petitioners have attempted to present several matters under the rubric of "Questions Presented" which are not proper grounds for the grant of a writ of certiorari by this Court. Where issues are not urged and briefed below, and where they have not been raised nor actually considered by the Court of Appeals, they are not properly before this Court. Mere mention or even brief discussion of a matter not properly raised does not bring it before this Court. Ivrrell v. District of Columbia, 243 U.S. 1 (1917); Lawn v.

United States, 355 U.S. 339 (1958); Neely v. Eby Construction Co., 386 U.S. 317 (1967); and Adickes v. Kress and Co., 398 U.S. 144, n. at 147 (1970).

Petitioners' question 1.a. concerning the comparison of constitutional standards for vagueness and overbreadth applicable to criminal statutes and to public school rules was not adequately urged or briefed below. The question attempted to be presented was mentioned in the dissent of Judge Christensen who speculated about how this Court might react to the "preclusion of the regulation of such material [the "earthy words" contained in the "Corn Cob Curtain"] by school authorities..." Jacobs et al, 490 F.2d at 611. The majority did not preclude all regulation of such material, however, and the speculative mention in the dissent does not satisfy this Court's traditional rules concerning issues properly presented to it.

Petitioners have also attempted to frame all "Questions Presented" in relation to both elementary and secondary schools. The majority made it explicit that it "had no occasion to decide whether or not age difference and the like would lead to a different ruling concerning elementary schools." Jacobs et al, 490 F.2d at 610. It is clear from the record that all proceedings at the District Court level concerned a publication by high school students which was received by high school students, teachers and administrators. The Court of Appeals recommended

after the above quoted passage that petitioners apply to the District Court for a limitation of the outstanding injunction to high schools. Rather than make such an application in good faith, petitioners are attempting to have this Court review the decision of the Court of Appeals as if it applied to the elementary students in their schools. Respondents have at no time either briefed or argued such an issue, and it is not properly before this Court. A proper evaluation of the petition for certiorari requires, therefore, that all arguments attempting to make the decision below applicable to elementary schools be disregarded.

There Is No Conflict of Decision

Petitioners have naturally tended to emphasize what they perceive to be conflicts among the Courts of Appeals which this Court must resolve. The regulations invalidated in the proceedings below, however, are ones which differ blatantly from those outside of the Seventh Circuit upon which petitioners rely for the appearance of conflict. Petitioners' regulations which go far beyond anything considered in prior appellate decisions are §1.1.1.3 [the "likely to produce" regulation] and §1.3.1.1 [the "classes being conducted" rule].

The most significant case which petitioner finds in conflict with the decision

below is Eisner v. Stamford Board of Education, 440 F.2d 803 (2d Cir. 1971). They claim that a rule approved in Eisner is "virtually identical" to the "likely to produce" rule. Petition at 10. They also claim that the "likely to produce" rule bears a "similarity" to the standard established in Tinker v. Des Moines Independent School Dist., 393 U.S. 503 (1969). Petition, at 11. The "likely to produce" rule adopted by petitioners differs in one important respect from the rule in Eisner and the standard in Tinker: they each require "a showing that the students' activities would materially and substantially disrupt the work and discipline of the school." Tinker, supra, at 513. We have referred to §1.1.1.3 as the "likely to produce" rule to emphasize the degree to which it departs from the Tinker and Eisner standards.

Eisner requires a finding that material proposed to be distributed "will interfere," "will cause violence or disorder," or "will constitute an invasion of the rights of others." Eisner, supra, at 805. The "likely to produce" rule lends itself readily to the suppression of publications upon "a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." Tinker supra, at 509. Furthermore, the "likely to produce" rule attempts to regulate literature which might cause "injury to others." The Court of Appeals focused to an extent upon the vagueness of that language which petitioners do not discuss

in the pleadings before this Court. Such language does not appear in any of the other decisions upon which they rely to demonstrate the existence of a conflict. It is submitted that the language of the "likely to produce" rule by itself distinguishes the instant case from those with which it allegedly conflicts.

The "classes being conducted" rule is also unique among the Courts of Appeals' decisions on the regulation of student publications. Respondents have argued since the promulgation of the rule that it constitutes, by itself, an absolute ban on the distribution of student publications. Petitioners' brief before the Court of Appeals was somewhat more candid on this issue than the discussion before this Court. Appellants' Brief, 41 - 45, Petition 19 and 20. In the brief below, petitioners graphically emphasized that since it was conceded that they had the power to reasonably regulate the place of distribution, they were utilizing that power by designating as the "place" subjected to regulation an entire school. The Court of Appeals recognized the "classes being conducted" rule for the device it clearly is. Jacobs et al, 490 F.2d at 609. No other Court of Appeals has been presented with such a bald prohibition against distribution of publications.

The "Classes being conducted" rule simply prohibits any distribution of any "distributable literature" by any student

in any schools if classes are being conducted in the school in question.

The Court of Appeals properly relied upon Grayned v. City of Rockford, 408 U.S. 104 (1972) and its analysis relying upon Tinker, supra, in finding the "classes being conducted" rule constitutionally deficient. Ironically, however, petitioners' attempt to rely upon Grayned and its requirement for careful analysis of the environment in which speech-related activities could be regulated as somehow supporting their total prohibition of speech-related activities at all times so long as the unrelated prerequisite of a class in session. While Grayned requires that First Amendment rights be subjected only to reasonable regulations "narrowly tailored to further the State's legitimate interest," the "classes being conducted" rule is a regulatory sledge hammer incapable of application on a case by case or other reasonable basis. Grayned, supra, at 116-117. Since the entire case can be disposed of by affirming the Court of Appeals' decision on the "classes being conducted" rule, and since that rule is not the subject of any other federal appellate decisions, petitioners have failed to present a sufficiently compelling case to warrant a grant of certiorari.

The decisions in other judicial circuits upon which petitioners have attempted to rely make it clear that none of them would have permitted the "classes being conducted" rule to stand. The Fifth

Circuit Court of Appeals in Shanley v. Northeast Independent School Dist., 462 F.2d 960 (5th Cir. 1972) discussed time, place, and manner of distribution limitations, and it was made clear that reasonableness and equality of application were the touchstones for evaluating such rules. The Fourth Circuit in Quarterman v. Byrd, 453 F.2d 54 (4th Cir. 1971) would require the showing of substantial facts which supported a reasonable forecast of substantial disruption or material interference with school activities on account of the distribution of printed material. That Court clearly would not approve a blanket prohibition against distribution of any student publication at any time in any school simply because one or more classes were in session at some location within the school. The Ninth Circuit in Hatter v. Los Angeles City High School Dist., 452 F.2d 673 (9th Cir. 1971) specifically upheld the First Amendment rights of high school students to pass out leaflets before school on a street corner across from the school grounds. It clearly would not approve of the "classes being conducted" rule. The position of the Seventh Circuit is clear not only on the basis of the instant case, but also on the basis of Scoville v. Board of Education, 425 F.2d 10, cert. den. 400 U.S. 826 (1970) and Fujishma v. Board of Education, 460 F.2d 1355 (7th Cir. 1972). Without summarizing the numerous District Court decisions in other circuits, it should be sufficient to say in summary fashion that none of them would approve the "classes being conducted" rule.

Petitioners' Prior Restraint Rules Are Not Supported by Decisions Outside the Seventh Circuit

Petitioners' have argued in effect that their prior restraint rule would be approved in Circuits other than the Seventh Circuit. It is clear, however, that petitioners' rules would not be approved even in the Circuits which have approved some variety of prior restraint rules. This Court is not, therefore, presented with any meaningful conflict among the Circuits which requires present resolution. Having already indicated the fact that the Second Circuit in Eisner would not approve of the "likely to produce" or "classes being conducted" rules, it should also be pointed out that the Second Circuit would not approve petitioners' prior restraint rules. Indeed, it cannot be stated too strongly that petitioners have wholly failed to disclose to this Court that each of the Court of Appeals' decisions which they characterize as being in conflict with the Seventh Circuit involved in each instance holdings that rules under which school authorities were acting were vague, overbroad, or inadequately delineated with respect to procedure. In Eisner, the Court declared unconstitutional a rule which read as follows:

> No person shall distribute any printed or written matter on the grounds of any school or in any school building, unless the

distribution of such material shall have prior approval by the school administration.

The rule there declared unconstitutional is all but identical to one of petitioners' rules which was the basis for the commencement of these proceedings, and which had been explicitly held unconstitutional by the Seventh Circuit in Fujishma, supra. While making the briefest allusion to the procedural requirements enunciated in Eisner, petitioners failed to disclose that the Court there found the regulations in question constitutionally defective for failing to provide a procedure for prior submission to school administrators, and that it required compliance with Freedman v. Maryland, 380 U.S. 51 (1965) procedural methods. The prior restraint rules, even as amended by petitioners, in the instant case would clearly not be approved by the Eisner court on the same grounds. Furthermore, one of the most significant factors which saved the school in Eisner any degree of prior restraint was the fact that the rules there did not authorize any punishment of students who published literature that could be censored under the regulations. The Eisner court would not, therefore, approve of petitioners' prior restraint rules, particularly §1.6.1 which provides for suspension or expulsion of students violating petitioners' rules on the subject.

Petitioners also point to Shanley as an indication that their rules would be

constitutionally permissible in the Fifth Circuit. It must be noted, however, that as was the case in Eisner, the Court in Shanley held unconstitutional yet another blanket prohibition against distribution of literature "of any kind, sort, or type without the specific approval of the principal." And, once again, it was found that First Amendment rights could not be adequately protected in the absence of standards and guidelines stating clear and demonstrable criteria that school administrators could utilize to evaluate materials submitted to them. The Fifth Circuit also found that prohibition against "distributions" or "attempts to distribute" constituted "blunderbuss regulation" which was contrary to the First Amendment. Therefore, even though the Fifth Circuit indicated that it might approve of prior restraint regulations, it stated that such regulations must clearly show the relationship between preventing "distribution" and the prevention of material and substantial disruption of school activities. There is nothing to indicate that the Fifth Circuit would find the total absence of such guidelines in petitioners' prior restraint rules anymore palatable than did the Seventh Circuit.

The Fourth Circuit also found that a regulation prohibiting the distribution of "any advertisements, pamphlets, printed material, written material, announcements or other paraphernalia without the express permission of the principal of the school" was unconstitutional. Once again, a regu-

lation of the type that petitioners had at the commencement of these proceedings was declared unconstitutional. Once again, another Circuit found that the principal vice in such a regulation was the absence of criteria to be followed by the school authorities as well as in the absence of any procedural safeguards for review of their decisions. Petitioners' prior restraint rules, lacking as they do any criteria for guidance of school authorities or adequate procedures for the protection of students would not be upheld in the Fourth Circuit. The fact that Courts of Appeals have indicated their willingness to approve some form of prior restraint in student publications does not create an actual conflict in view of the complete inadequacy under those Courts' standards of petitioners' rules. Perhaps the clearest indication of the absence of criteria in those rules is §1.1.1.1 which holds that "no student shall distribute in any school any literature that is obscene as to minors."

This Court Should Not Grant Certiorari for the Purpose of Writing An "Obscenity" Rule for Petitioners

The most convincing demonstration of the absence of criteria in petitioners' prior restraint rules is that they have written a blanket prohibition against materials "obscene as to minors" and asked this Court on certiorari to "settle,

the crucial issue of the extent of the power of school officials to either prevent or punish the use in elementary and secondary schools by minors of such language as 'f---, screw, and eat shit'" Petition p 20. Obviously not being able to claim a conflict among the Circuits on this issue, petitioners have not so much as even attempted to provide criteria for the regulation of this area. They simply argue that different standards may be approrpiate for high school [and elementary despite the observations above on the scope of these proceedings] students than are appropriate for the adult community. The Court of Appeals, and respondents, have had no difficulty with that proposition as exemplified by Ginsberg v. New York, 390 U.S. 629 (1968). The Court found, and petitioners offer no suggestions to the contrary, that the "Corn Cob Curtain" did not contain erotic material as such. It must be noted as well, that petitioners reiterate to a degree what amounts to harping on the subject that the troublesome "earthy words" recognized below are found "throughout" the "Corn Cob Curtain." Petitioners' assertions that such material appears "throughout" amount to a bad faith claim in view of the specific finding by the Court of Appeals that the "material amounts only to a very small part of the newspapers" and in the total absence of any additional evidence submitted by petitioners. Jacobs et al, supra, at 610.

From the very commencement of these proceedings, petitioners have continually pointed to the same three or four examples of language which they have found to be offensive. The repeated statement that allegedly obscene material appears "throughout" is both false and deliberately misleading. "Corn Cob Curtain" is one of the most moderate and mild mannered student publications of its kind.

Although petitioners have not specifically claimed them as authority motivating a grant of certiorari in this case, the District Court decisions upholding disciplinary treatment for students using "earthy words" predate this Court's decision in Cohen v. California, 403 U.S. 15 (1971) See, e.g. Schwartz v. Schuker, 298 F. Supp. 238 (DC NY 1969); and Baker v. Downey City Board of Education, 307 F. Supp. 517 (DC Cal. 1969). While arising in a state university and involving somewhat different language, this Court's recent majority opinion in Papish v. University of Missouri, 410 U.S. 667 (1973) does not support the position being advocated by petitioners. See, also, Rosenfeld v. New Jersey, 408 U.S. 901 (1972).

One additional point concerning the "earthy words" issue clearly indicates that this Court should not grant certiorari on that ground. Although petitioners have complained about the handful of such words they managed to find in "Corn Cob Curtain," what they are really asking this Court to do is not declare such words ob-

scene in and of themselves. Rather, petitioners are asking this Court to tell them what their regulation against the distribution of literature "obscene as to minors" means. At the very least, petitioners should have provided guidelines and criteria, and they should have presented this Court with examples of applications which could be reviewed meaningfully. At the time the issues of "Corn Cob Curtain" were distributed in petitioners' schools, however, the "obscene as to minors" rule did not exist. Rather, the rule which required express prior approval of the superintendent, and which has been rejected by all Courts of Appeals that have reviewed such a rule, was in effect. The only evidence that exists in the record of these proceedings on the subject consists of abortive attempts by petitioners' counsel to embarrass various individual respondents by making them read the allegedly offensive language out loud. Petitioner also introduced generalized and conclusory self-serving testimony by school administrators who indicated nothing but the most vague and speculative impressions on the subject.

Other Questions Presented By Petitioners Do Not Warrant Review

Petitioners have argued that the injunction of the District Court in these proceedings is "fatally overbroad." As pointed out above, however, petitioners

have failed to avail themselves of the opportunity indicated by the Court of Appeals to apply to the District Court for a narrowing of that injunction. They additionally have attacked the injunction on the basis of Chaplinsky v. New Hampshire, 315 U.S. 568 (1942) and Near v. Minnesota ex rel Olson, 283 U.S. 697 (1931). Recognizing Mr. Justice Rehnquist's dissent in Papish, supra, in which he applied Chaplinsky to a newspaper, it is submitted that the "fighting words" concept upon which petitioners appear to be relying has not traditionally been applied to written words. See, Papish, supra, at 676 (Rehnquist diss).

Petitioners claim that certiorari should be granted because of an alleged conflict with the Second Circuit decision in Katz v. McAulay 438 F.2d 1058 (2nd Cir. 1971), cert. den. 405 U.S. 933. Katz, however, as parenthetically recognized by petitioners [Petition, 17] involved at least a discretionary ban. As not pointed out by petitioners, however, Katz involved a statewide rule that had been in effect for at least twelve years, and upon the basis of which some seventy-five to one hundred requests to use school property for various kinds of solicitation of funds had been denied. Most importantly, however, Katz did not involve the distribution of an underground newspaper for which donations were given to those distributing it. On the contrary, it involved the distribution of a one page leaflet and simultaneous solicitation of funds to be given

to certain persons who were on trial in federal court. The solicitation was, therefore, for an outside activity. It did not involve a concomitant to the distribution of a student publication.

The Court of Appeals was willing to assume that the rules on solicitation were not a "deliberate and calculated device" to suppress the "Corn Cob Curtain." There is no escaping the fact, however, that the rules in question were not promulgated until after the commencement of this litigation. Indeed, they were promulgated as a response to this litigation and the District Court's initial holding that the original prior restraint rules were unconstitutional. There is no evidentiary basis for the promulgation of the anti-solicitation rule in general in the record of these proceedings.

Petitioners also seek certiorari on grounds which amount little more to an assertion of error on the part of the Court below. Such issues as the rules prohibiting anonymity and requiring school related authorship do not, it is submitted, present an adequate basis for the grant of certiorari. Petitioners are simply claiming that the Court of Appeals was wrong in its decision on those issues. No significant conflicts, federal constitutional principles, or other traditional considerations are put forward, however, which would motivate review.

Appointment of a Guardian Ad Litem For Minor Plaintiffs Is Not Mandatory

Rule 17(a), Federal Rules of Civil Procedure, provides, inter alia, that "(e)very action shall be prosecuted in the name of the real party in interest." The meaning and intent of this statement is analyzed in 3A J. Moore, Federal Practice ¶ 17.02, at 53 (2d ed. 1970) to be:

> "An action shall be prosecuted in the name of the party who, by the substantive law, has the right sought to be enforced."

See, 6 Wright and Miller, Federal Practice and Procedure, §1542 at 639 (1971). Herein, plaintiffs are the parties who, by the substantive law, are seeking to enforce their fundamental constitutional rights. Indeed, it is now well established that high school students may commence actions seeking relief for infringement of constitutional rights under 42 U.S.C. §1983, Fujishima, et al. v. Board of Education, 460 F.2d 1355 (7th Cir. 1972), and that high school students are "persons" entitled to First and Fourteenth Amendment protections. Scoville v. Board of Education of Joliet Tp. H.S. Dist 204, et al, 425 F.2d 10, 13 (7th Cir. 1970); Tinker v. Des Moines Community School District, 393 U.S. 503 (1969). Our law clearly recognizes the independent constitutional rights of minors without requiring such rights to be derived from

those possessed by adult parents. As Mr. Justice Fortas said: "Under our constitution, the condition of being a boy does not justify a Kangaroo Court." In Re Gault 387 U.S. 1, 28 (1967).

The substantive constitutional right which plaintiffs have sought to protect is the right of public high school students to distribute and sell a student publication in the public schools of Indianapolis without prior censorship.

Defendants' reliance upon Roberts, et al v. Ohio Casualty Insurance Company, 256 F.2d 35 (5th Cir. 1958), is misplaced. In Roberts it was the unrepresented minor who obtained a reversal for failure to appoint a personal representative. Where the court makes a judicial determination that a minor is protected without the appointment of a guardian ad litem, it is unnecessary to appoint such a representative, especially where there is no showing of inadequate representation or prejudice to any party. Roberts, supra at 39; see, Till v. Hartford Accident & Indemnity Co., 124 F.2d 405, 408 (10th Cir. 1941); Westcott v. United States Fidelity & Guaranty Co., 158 F.2d 20, 22 (4th Cir. 1946); Rutland v. Sikes, 203 F. Supp 276 (E.D.S.C. 1962), aff'd on other grounds, 311 F.2d 538 (4th Cir.), cert. denied 374 U.S. 830.

Conclusively, appointment of a guardian ad litem is unnecessary in the case at bar.

Conclusion

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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